

## **FACTSHEET**

**TITLE:** PRE-EXISTING SPECIAL PERMIT NO. 29A,  
requested by Duane Hartman Investments, Inc., for  
authority to sell alcoholic beverages for consumption off  
the premises, on property generally located at S.  
Folsom and W. Prospector Court.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 07/09/03  
Administrative Action: 07/09/03

**STAFF RECOMMENDATION:** Conditional approval.

**RECOMMENDATION:** Conditional approval (5-2:  
Carlson, Duvall, Larson, Bills-Strand and Steward voting  
'yes'; Krieser and Taylor voting 'no'; Schwinn absent).

### **FINDINGS OF FACT:**

1. The applicant is requesting permission to expand the area in this building in which alcohol may be sold for off-site consumption. The expansion area is within a sports bar, the major portion of which will remain for continued alcohol sales for on-site consumption.
2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on 2-4, concluding that the request complies with the requirements of Section 27.63.685 of the Zoning Ordinance and is an appropriate use of land at this location.
3. The applicant's testimony is found on p.7-8. This application had been submitted for administrative approval; however, the Director of Planning determined that it should go through the public hearing process. The applicant explained that this is the formal application to expand the area of the pre-existing special permit for off-sale liquor sales. The applicant submits that all of the requirements of the special permit for the sale of off-sale alcohol have been satisfied.
4. A representative of the Yankee Hill Neighborhood Association testified in opposition, suggesting that the area is adequately served with off-sale liquor; however, the City Law Department representative pointed out that this application cannot be considered by the Planning Commission in terms of need, but only as a land use consideration (See Minutes, p.8). The record also consists of a letter in opposition from the Vice-President of the Yankee Hill Neighborhood Association in opposition (p.12).
5. On July 9, 2003, the majority of the Planning Commission agreed with the staff recommendation and voted 5-2 to recommend conditional approval, as set forth in the staff report dated June 25, 2003. The conditions of approval are set forth on p.5 (Commissioners Taylor and Krieser dissenting). (See Minutes, p.8)

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** July 14, 2003

**REVIEWED BY:** \_\_\_\_\_

**DATE:** July 14, 2003

**REFERENCE NUMBER:** FS\CC\2003\PESP.29A

## LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

### for July 9, 2003 PLANNING COMMISSION MEETING

**P.A.S.:** Pre-Existing Special Permit #29A

**PROPOSAL:** A special permit to allow the sale of alcoholic beverages for consumption off the premises.

**CONCLUSION:** This request complies with the requirements of Section 27.63.685 and is an appropriate use of land at this location.

<b><u>RECOMMENDATION:</u></b>	Conditional Approval
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### **GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** Lots 179 and 218, Irregular Tracts, located in Section 34, T10N, R6E, of the 6<sup>th</sup> P.M., Lancaster County, Nebraska.

**LOCATION:** 640 West Prospector Court

**EXISTING ZONING:** H-3 Highway Commercial

**EXISTING LAND USE:** Commercial

### **SURROUNDING LAND USE AND ZONING:**

North:	Highway 77/Van Dorn Street Interchange	P
South:	Commercial	H-4, R-3
East:	Highway 77	P
West:	Vacant	P

**COMPREHENSIVE PLAN SPECIFICATIONS:** The Comprehensive Plan designates commercial land use in this area.

**AA#03039** - This amendment sought to expand the off-sale to include the sports bar and grill was initially submitted as an administrative amendment to the pre-existing special permit. The amendment was denied by the Planning Director on June 11, 2003 in order for the expansion to have a public hearing, and this request was submitted in response to that denial.

On June 12, 2003, Pre-existing Special Permits 29 and 30 were issued at the request of the applicant for the pre-existing off-sale and on-sale, respectively, at 640 West Prospector Court.

## **ANALYSIS:**

**BACKGROUND:** The sale of alcohol for consumption both on and off the premises at this location pre-date the special permit provisions of LMC Sections 27.63.680 and 27.63.685 in the Zoning Ordinance. The building is roughly divided into thirds with a convenience store at the west end, an adult entertainment establishment in the middle, and a sports bar and grill on the east end.

A pre-existing special permit has been issued for the sale of alcohol for consumption off the premises for only the convenience store, and another was issued for the sale of alcohol for consumption on the premises and included the entire building. This request is to expand the pre-existing special permit for off-sale to also include the sports bar and grill. It does not include the adult entertainment facility in the middle of the building.

**1. SPECIAL PERMIT REQUIREMENTS PER LMC 27.63.685:** Alcoholic beverages may be sold for consumption off the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1 and I-3 zoning districts upon the approval of a special permit. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions, which can be waived by the City Council:

**(a) Parking shall be in accordance with Section 27.67.020 of the Lincoln Municipal Code.**

The parking lot is paved and complies with the requirements of LMC Section 27.67.020.

**(b) The sale of alcoholic beverages for consumption on the premises shall not be permitted without issuance of a permit under Section 27.63.680 of this code.**

This application is for a special permit to expand the area where the sale of alcohol for consumption off the premises is allowed. The sale of alcohol for consumption on the premises throughout the entire building is already allowed by Pre-existing Special Permit #30.

**(c) The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director.**

There are no day care facilities, residences or residential districts within 100' of the premises. The nearest of these is a daycare facility to the south across West Prospector Court in excess of 200' away.

**(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.**

No new lighting is being proposed as part of this special permit. The building and parking lot already exist. However, any new lighting will be required to comply with the Design Standards for parking lot lighting (Design Standards Chapter 3.45, Section 3.8).

**(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.**

A drive-through window is not shown as part of this request.

**(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.**

An amplified outside noise source is not shown as part of this request.

**(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.**

The access door to the sports bar and grill faces the H-4 district to the south.

**(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.**

Access to this site is from South Folsom Street and West Prospector Court. Neither of these streets are considered residential streets adjacent to this site.

**(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.**

**(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:**

**(1) Revocation or cancellation of the liquor license for the specially permitted premises; or**

**(2) Repeated violations related to the operation of the permittee's business.**

**Planning Commission review and City Council approval is required for this use.**

- 2. POLICE RESPONSE:** The Police Department has reviewed this request and has no objection.
- 3. SHERIFF'S RESPONSE:** This request was routed to the Lancaster County Sheriff's Department for comments. Any comments will be forwarded when received.
- 4. PUBLIC WORKS RESPONSE:** Public Works and Utilities had no objections to this request.

## **CONDITIONS:**

### Site Specific:

1. This approval permits the expansion of the sale of alcohol for consumption off the premises to include the sports bar and grill as delineated on the site plan.

### General:

2. Before receiving building permits:
  - 2.1 The permittee shall have submitted a reproducible final plan with 5 copies.
  - 2.2 The construction plans shall comply with the approved plans.

### Standard:

3. The following conditions are applicable to all requests:
  - 3.1 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
  - 3.2 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 3.3 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.
4. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

### Prepared by:

Brian Will, AICP  
Planner

June 25, 2003

**APPLICANT/****OWNER:**

Duane Hartman Investments, Inc.  
PO Box 22787  
Lincoln, NE 68542 (402) 477-6668

**CONTACT:**

Peter Katt  
1045 Lincoln Mall Suite 200  
Lincoln, NE 68508 (402) 476-7621

## PRE-EXISTING SPECIAL PERMIT NO. 29A

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward; Schwinn absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Brian Will of Planning staff submitted a letter in opposition from the Yankee Hill Neighborhood Association.

### Proponents

**1. Peter Katt** appeared on behalf of the applicant and owner, Duane Hartman Investments. This is an off-sale permit for an existing structure at 640 W. Prospector Court, lying immediately adjacent to the West Bypass. When purchased by his client, it was developed as N Street West and The Prospector, previously called the Dutton's Den. After that time, the city adopted special permit requirements with regard to the sale of alcohol both on- and off-premises. Under the special permit requirements, pre-existing uses predating the requirement for a special permit were not to be treated as nonconforming, but were to be treated as if a special permit were issued. However, that has not been a traditional practice in terms of formally asking for the issuance of special permits in these situations. Katt had believed that the issue was resolved.

In the spring of this year, the establishment on the east end of the building, Coaches Bar and Grill, the current holder of an on-sale premise license, asked the owner for permission to have off-sale. Coaches Bar and Grill applied for an off-sale liquor license that went through the process. As a part of that process, there was a significant degree of confusion within the city as to the status of special permits. Thanks to the cooperation with the Planning Department, Katt believes they have sorted it all out. Katt made a formal request for the special permits to be issued for the pre-existing use, which was the off-sale for the N Street West (which is now a convenience store), and a pre-existing special permit for on-sale for the entire building. Both of those permits have been issued.

This application involves a request to expand the pre-existing off-sale liquor license premise to the Coaches premise. Katt filed for administrative approval, as allowed by the ordinance; however, the Planning Director chose to deny that administrative request, believing that there was perhaps interest in the community. This is the formal application to expand the area of the special permit for the off-sale. The staff report does a nice job laying out the factors of the special permit. The applicant satisfies all the requirements of the special permit for the sale of off-sale alcohol.

Carlson pondered why the clientele that is in that area is not sufficiently served by purchasing off-sale in the a convenience store. Katt does not believe that is a question that is relevant to the determination of whether it is proper for the land use issue. Therefore, it is not a factor in the special permit determination. It is the nature of our economy that people are allowed to compete for business. The

Nebraska Supreme Court has said that the sale of alcohol is no different than any other commercial business. The issues of necessity and convenience are issues that are properly raised on a determination as to whether or not a liquor license will be issued, but should not be a factor as to whether the property qualifies for a special permit. We have a land use zoning issue, and then there is a liquor license issued by the state. In this case, the liquor license has been granted. The state has issued the liquor license for off-sale alcohol at the Coaches premise, but they cannot exercise that license because the land use special permit is not in effect.

### Opposition

1. **David Asper**, 4301 S.W. 12<sup>th</sup>, Treasurer of the Yankee Hill Neighborhood Association, testified in opposition. There are sufficient opportunities for off-sale liquor sales at this location; there are more down the street; the Association does not believe it is needed. This is a family-oriented neighborhood; the neighborhood does not need the extra traffic and the other activities that go with this.

### Staff questions

Carlson asked staff to respond to the applicant's testimony. Rick Peo of the City Law Department believes that the applicant is correct, i.e. that we cannot treat the sale of liquor differently. This is a land use consideration. Based on the staff report, this application satisfies the requirements in the ordinance. If there is no evidence contrary to the staff report, he suggested that the permit should be approved.

### Response by the Applicant

Katt believes the staff report addresses the issues raised by the Association.

### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

July 9, 2003

Larson moved to approve the staff recommendation of conditional approval, seconded by Duvall. Carlson commented that he certainly finds the answers given to be compelling, so he will be supportive, but it seems a little bit odd, in general, that there is not criteria that should be appropriate for discussion in this determination. It seems odd that the issue of "adequately served" should not be a factor. On the other hand, Steward suggested that the Comprehensive Plan does not attempt to regulate moral principles.

Taylor stated that he will vote against the motion simply because of the concern of the neighborhood. He believes liquor is different than buying chewing gum or pop. In consideration of the neighborhood and the idea that the area is well-served, he believes there is a time and place for competition but he does not think the area is going to be improved by providing more liquor cheaper.

Motion for conditional approval carried 5-2: Carlson, Duvall, Larson, Bills-Strand and Steward voting 'yes'; Krieser and Taylor voting 'no'; Schwinn absent.

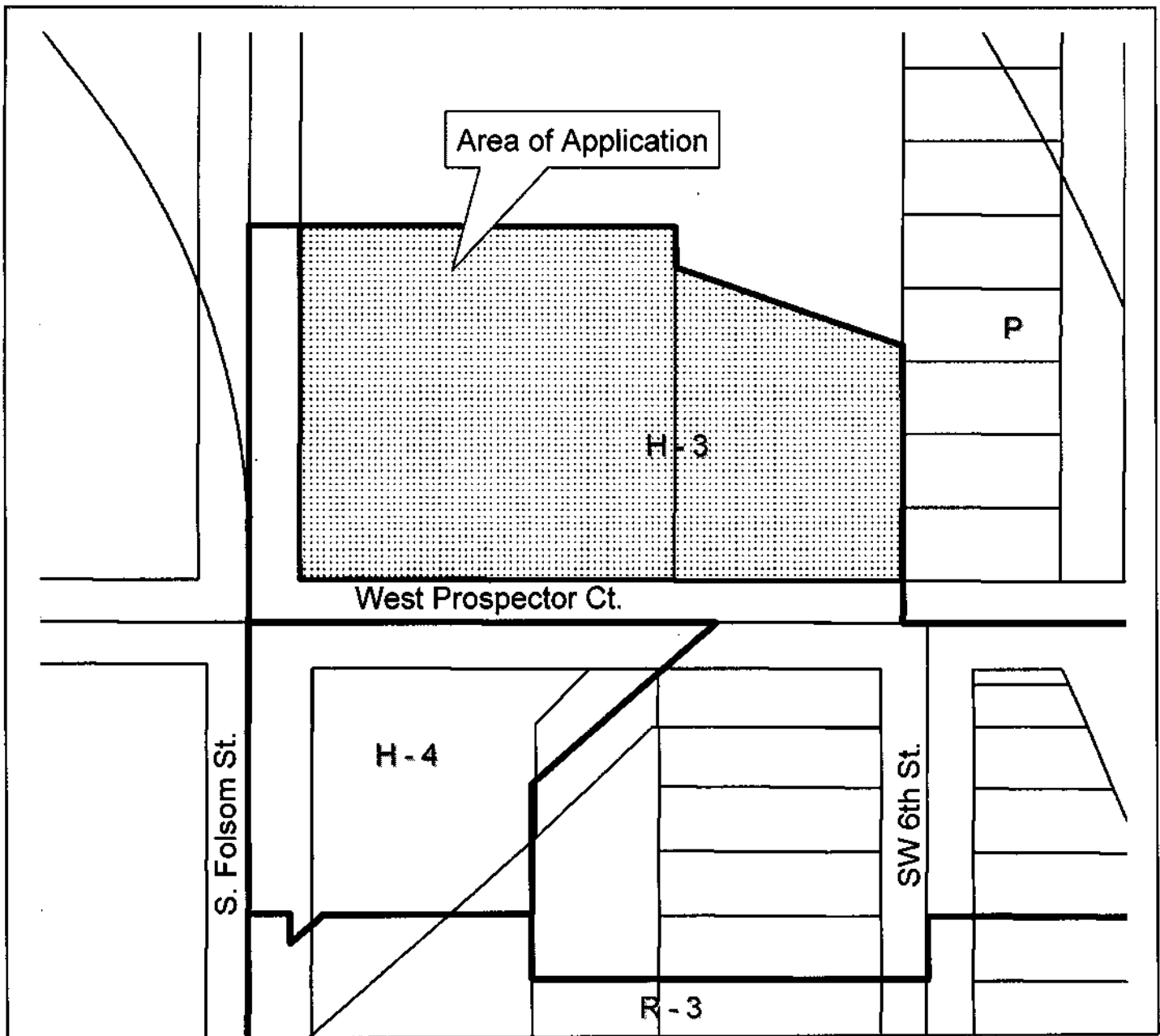




**Pre-Existing Special Permit #29A  
S. Folsom & W. Prospector Ct.**



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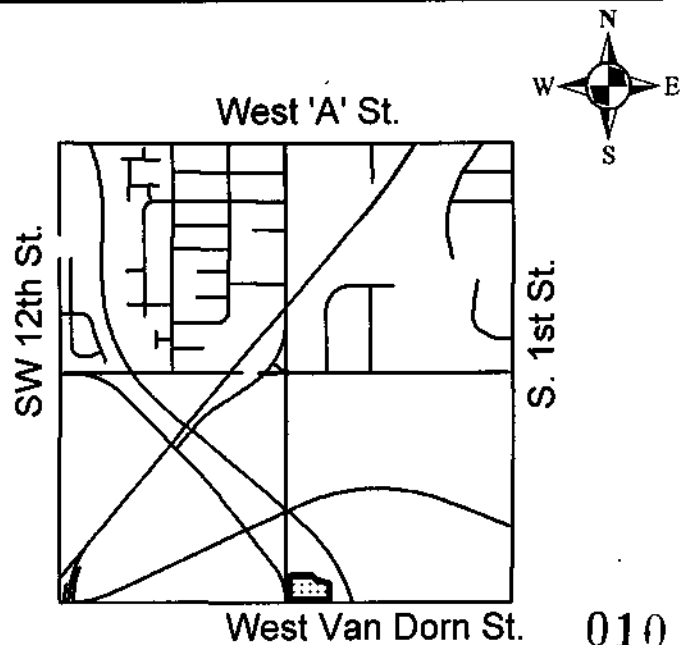
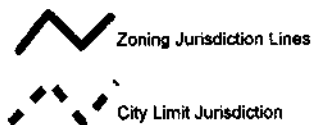


## Pre-Existing Special Permit #29A S. Folsom & W. Prospector Ct.

### Zoning:

- |            |                                        |
|------------|----------------------------------------|
| R-1 to R-8 | Residential District                   |
| AG         | Agricultural District                  |
| AGR        | Agricultural Residential District      |
| R-C        | Residential Conservation District      |
| O-1        | Office District                        |
| O-2        | Suburban Office District               |
| O-3        | Office Park District                   |
| R-T        | Residential Transition District        |
| B-1        | Local Business District                |
| B-2        | Planned Neighborhood Business District |
| B-3        | Commercial District                    |
| B-4        | Lincoln Center Business District       |
| B-6        | Planned Regional Business District     |
| H-1        | Interstate Commercial District         |
| H-2        | Highway Business District              |
| H-3        | Highway Commercial District            |
| H-4        | General Commercial District            |
| I-1        | Industrial District                    |
| I-2        | Industrial Park District               |
| I-3        | Employment Center District             |
| P          | Public Use District                    |

One Square Mile  
Sec. 34 T10N R6E



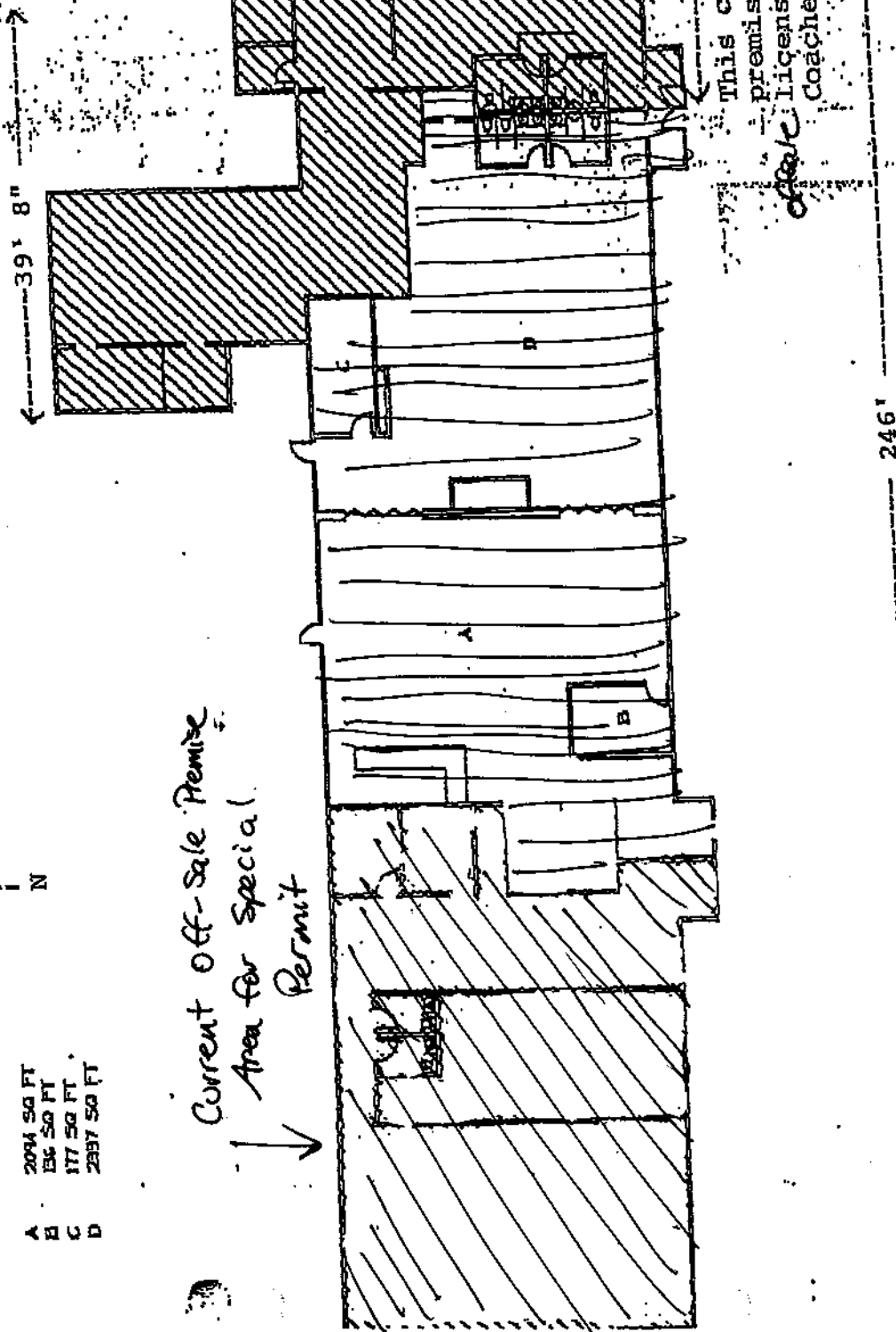
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Bldg @ 640 W. Rosper Ct.

SQUARE FOOTAGES

- A 2094 SQ FT
- B 136 SQ FT
- C 177 SQ FT
- D 2337 SQ FT

Current Off-Sale Premise  
Area for Special  
Permit



existing liquor-licensed area

This crosshatched portion of the premises is to be covered by the license for DLH, Inc., d/b/a Coaches Sports Bar & Grill

EXHIBIT

A



<INFO@amsweeping.com>  
07/08/2003 11:32 AM

To: <plan@ci.lincoln.ne.us>  
cc:  
Subject: Zoning-W. Prospector

To Whom It May Concern:

I would like to express my concern for any zoning that would allow an off-sale liquor license at Coaches Bar and Grill. There is already an off-sale liquor license issued at that address—in that building—at the Yankee Doodle Convenience Store. This may be three separate business, but the fact of the matter remains that it IS ONE building—ONE location—ONE address. I am against this address being granted TWO off-sale liquor licenses.

I would like to further mention that the Yankee Hill Neighborhood is already over-saturated with liquor sales. As mentioned above, the Yankee Doodle Convenience Store has an off-sale license and at the exact same address and in the exact same building is an on-premise liquor license at Coaches Bar and Grill. There is also an on-premise AND off-sale liquor license right up Folsom Street at the Outpost Bar.

Please consider the neighborhood's concerns and deny any zoning that would allow for two off-sale liquor licenses to be granted at one address/location.

Thank you for your consideration,

Robyn Robinson

Vice President

Yankee Hill Neighborhood Association